

**Internal Revenue Service**

Appeals Office  
2525 Capitol Street, Suite 201  
Fresno, CA 93721

**Department of the Treasury****Taxpayer Identification Number:****Release Number: 201337018****Release Date: 9/13/2013****Date: June 19, 2013****Person to Contact:**

Tel:

Fax:

A

B

**Tax Period(s) Ended:****UIL: 501.32-00, 501.03-18****Certified Mail**

Dear .

We considered your appeal of the adverse action proposed by the Director, Exempt Organizations, Rulings and Agreements. This is a final adverse determination regarding your request for recognition of exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, 2011.

The revocation of your exempt status was made for the following reason(s):

You have not demonstrated that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code § 501(c)(3) and Treasury Regulations § 1.501(c)(3)-1(d), including that you have failed to establish that your net earnings do not inure to the benefit of private shareholders and individuals, which is prohibited by IRS section 501(c)(3).

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit [www.irs.gov](http://www.irs.gov).

If you were a private foundation as of the effective date of revocation, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer

Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit [www.irs.gov/advocate](http://www.irs.gov/advocate) for more information.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: **July 30, 2012**

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**Legend:**

B = President  
J = Predecessor Organization  
W = State where incorporated  
x = Date of incorporation

**UIL Numbers:**

501.00-00  
501.03-00  
501.03-18  
501.32-00

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code Section 501(c)(3). The basis for our conclusion is set forth below.

**Issues**

1. Do the facts show you have failed to pass the operational test, therefore disqualifying you from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
2. Do your funds inure to the benefit of your founder, causing you to be disqualified from exemption under Section 501(c)(3) of the Code? Yes, for the reasons described below.
3. Does your sale of horses at market rates further a substantial, non-exempt purpose under Section 501(c)(3) of the Code, disqualifying you from exemption? Yes, for the reasons described below.

Letter 4036 (CG) (11-2011)  
Catalog Number 47630W

## Facts

You were formed by Articles of Incorporation on date x in the State of W by individual B to provide rehabilitation and care for neglected, abused and abandoned horses.

Your Bylaws state you are dedicated to providing rehabilitation and care for neglected, abused and abandoned horses.

You filed a Form 1023, Application for Exemption, seeking classification under Section 501(c)(3) of the Code. Your application stated your purposes are as follows:

- To rescue and rehabilitate abused, neglected, and abandoned horses, or horses destined for the slaughterhouse.
- To offer educational programs to students and the general public relating to horse management.
- To offer educational programs to students and the general public relating to the abuse of mares for estrogen replacement therapy.
- To assist other not-for-profit organizations within your county through consultation and loan of rehabilitated horses and associated equipment.

Horses that have suffered injury, neglect or have been designated for slaughter are brought to your facility. Immediately upon arrival, each animal's individual needs are evaluated. The horses are housed, kept clean, and receive proper nourishment and medications (if required) on a regular schedule. All of the animals are exercised, groomed, and trained. The animals are evaluated as to their ability to adapt to environmental changes, level of training, and capacity for higher achievement. With the help of enthusiastic volunteers from the surrounding community the animals are restored to health and then placed in carefully screened, loving homes.

As a part of the application, you indicated you are a successor to a previously tax-exempt organization, J. J's exemption under Section 501(c)(3) of the Code was revoked and the organization dissolved. You further indicated you "...have established a new corporation, and Board of Directors [are] to be responsible for effective governance of the newly formed organization." You also stated in your application that J was inactive for a period of time and, as a result, lost its exempt status. However, J had its exemption revoked following examination. When asked for a copy of J's revocation letter, you replied, "Have to find," but you did not send a copy. You did not respond to a second request for a copy of the revocation letter and your response was silent to our request. A copy of J's revocation letter was sent to you. The examination of J revealed that the income of J was inuring to the benefit of B. J's credit card had been used by B for personal purposes. Stolen checks were used by B through J, and B was convicted for forgery.

You were asked to demonstrate or explain how you have resolved all of the issues that were present at the time of J's revocation. Your complete response was "Pay Pal Account." When asked for a description of the policies and procedures you have in place to prevent private

inurement, you responded, "Paper Trail – cks." When asked for evidence you are keeping the records required by Section 6001 of the Code, you responded, "File and On Line Banking."

Responses to inquiries regarding your facilities and the specific descriptions and details of your operations were often incomplete and inconsistent.

B owns the property where you operate. The assets left from the previously-exempt organization, J, were transferred to you. Portions of a horse arena that belonged to J were transferred to you as a gift which, according to you, is worth about \$ . There was no written agreement regarding the transfer.

You described your facility as "our ranch," yet it's owned by B. A description was requested of the land and facilities you use in relation to the portion used by B. You stated in response, "2 ½ Acres Our Place – officer B Owner." Your proposed budgets include occupancy expenses for future years. When asked how you will determine the fair market value when you begin paying to use the facility, you stated, "We never have." You currently have a verbal agreement with B to use two acres of B's ranch free of charge until you become fully financially secure, at which time a monthly rental payment may be negotiated. The use of the facility is currently considered a donation-in-kind. Your budgets include this in-kind donation amount, which exceeds \$ per year. Regarding a request for actual expenses that occurred in your first year of operation, you responded, "My funds threw [sic] my Trust Account."

Donations from the public in support of maintenance expense were solicited through your website: "The high winds are a bit of a nuisance that cause damage to structures as well as fencing. We need to mend the ranch and don't want to turn away any animals for lack of funds." In response to a request for a list of expenditures made for repairs and maintenance of the ranch, you provided an insurance claim receipt indicating that B and B's spouse received an insurance settlement of less than \$ for damaged portions of their property's fence.

You rescue and rehabilitate horses and then sell them at market value to new loving owners. When you were asked how many horses you have sold in the last year, you said, "None." However, your website states,

Your website includes photographs of many of these horses. When asked how you advertise the horses for sale, you said, "have not sold or have any." In responding by FAX to a related inquiry, you said you had rescued two horses. In a second response to the same set of inquires, also received by FAX later the same day, you said you had rescued only one horse.

You were asked how you transport the horses and for a list of your assets. You responded, "I own 2 Trucks." Photographs of your facilities were requested, and you simply said to see your website. Your facility will hold 10-15 horses. You keep the horses at a ranch owned by B. When you were asked how many of the horses at the ranch belong to B personally, and how many belong to you, you responded by stating, "4."

As described on your website, you are dedicated to the rescue of those unfortunate horses bound for slaughter. You buy horses that are headed to the slaughter house from buyers who purchase animals by weight. You work directly with these in your geographical

area, where

On your website you ask

Your response to an inquiry about this was, "Old Information." You were asked for details about whether you had found a facility, including the address and details about the facility, and you simply responded, "Yes."

Although you were only recently incorporated in x your website states you have been operating for over 20 years. Your website instructs individuals on ways to make charitable donations to you, and indicates that such donations would be tax-deductible. These instructions also include many references to making donations to your predecessor, J, whose tax-exempt status has been revoked, rather than to you.

Your website also includes a section which states  
and that

When details regarding this notice and an explanation of the reward were requested, your complete response was: "Police Report" and you provided the name of a city. You did not provide a copy of the police report.

## Law

Section 501(a) of the Code provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized as exempt if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 6001 of the Code states that "Notice or regulations requiring records, statements, and special returns," provides that every person liable for any tax imposed by this title (Title 26 of the United States Code, which is the Internal Revenue Code), or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

Section 1.501(c)(3)-1(a)(1) of the regulations states that in order to be exempt as an organization described in Section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an exempt organization must serve a public rather than a private interest. The organization must demonstrate that it is not organized or operated to benefit private interests such as "designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Thus, if an organization is operated to benefit private interests rather than for public purposes, or is operated so that there is prohibited inurement of earnings to the benefit of private shareholders or individuals, it may not retain its exempt status.

Rev. Proc. 2012-9, superseding Rev. Proc. 90-27, 1990-1 C.B. 514, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.02 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. It further states:

- (1) The applicant is responsible for the accuracy of any factual representations contained in the application.
- (2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.
- (3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Section 4.03 states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990), the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), in an action for declaratory judgment pursuant to Section 7428(a), the Tax Court considered an adverse ruling by the IRS on an application for exempt status as a church. The applicant had declined to furnish some information, and made answers to other inquiries that were vague and uninformative. On the basis of the record, the Court held that the applicant had not shown that

no part of its net earnings inures to the benefit of the family or that petitioner was not operated for private benefit.

In Western Catholic Church v. Commissioner, 73 T.C. 196 (1980), the petitioner's only activities were some individual counseling and distribution of a few grants to needy individuals. The petitioner's failure to keep adequate records and its manner of operation made it impossible to trace the money completely, but the court found it clear that money passed back and forth between petitioner and its director and his for-profit businesses. The Court Held that petitioner had not shown it was operated exclusively for exempt purposes or the no part of its earnings inured to the benefit of its officer.

In New Dynamics Foundation v. United States, 70 Fed.Cl. 782 (2006), the petitioner brought to challenge the denial of its application for exempt status. The court found that the administrative record supported the Service's denial on the basis that the organization operated for the private benefit of its founder, who had a history of promoting dubious schemes. The organization's petition claimed that the founder had resigned and it had changed. However, there was little evidence of change other than replacement of the founder with an acquaintance who had no apparent qualifications. The court resolved these questions against the petitioner, who had the burden of establishing it was qualified for exemption. If the petitioner had evidence that contradicted these findings, it should have submitted it as part of the administrative process. "It is well-accepted that, in initial qualification cases such as this, gaps in the administrative record are resolved against the applicant".

### **Application of Law**

Section 501(a) of the Internal Revenue Code provides for exemption for organizations operated exclusively for religious, charitable, and educational purposes. Section 1.501(c)(3)-1(a)(1) of the regulations states that if an organization fails to meet either the organizational test or the operational test, it is not exempt. You have not substantiated the activities you conduct further exclusive 501(c)(3) purposes.

Although multiple requests have been presented to you, you have not supplied supporting records as required by section 6001 of the Code.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated for any purpose under Section 501(c)(3), unless it serves a public rather than a private interest. The facts show B has significant control of your operations. B completed your application, responded to requests, owns the facility and is considered your owner. Despite the revocation of your predecessor's tax-exempt status as a result of private benefit, inurement and inadequate records, you are unable to substantiate that operations will not inure to B's benefit.

As required by Rev. Proc. 2012-9, you have not established that you are organized and operated exclusively for exempt purposes and not for the private benefit of your creators, designated individuals or organizations controlled by such private interests. You are a successor to J, which was revoked due to the inurement of J's assets to B for B's own personal purposes. B has not provided any substantiation that the operations have changed in any



significant manner to allow you to now qualify for exemption. The minimal amount of information you provided affirms that you were formed for the private benefit of B.

Your purpose includes receiving horses as donations and rescuing horses from the slaughterhouse by purchasing them. However obtained, you then sell the horses at market rates. As indicated in Better Business Bureau, supra, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. Your purchase and subsequent sale of horses is your primary activity. This substantial, non-exempt purpose precludes you from qualifying for exemption.

You have not proven unambiguously that you qualify for a tax exemption, as in United States v. Wells Fargo Bank, supra. Likewise, as in the above-cited case of Bubbling Well Church, you have given answers to our inquiries that were vague and uninformative. The same questions were asked multiple times with minimal responses, and the responses often provided information contradictory to previously provided information or information available on your website. The Tax Court, in Bubbling Well Church, has stated that the application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an Applicant's] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of Section 501(c)(3)."

As in the case of Western Catholic Church, supra, your lack of sufficient records makes it impossible to trace the use of your money completely. B receives a private benefit by seeking donations from the public on your website to pay for repairs to B's ranch. You also appear to confuse the expenses of running the ranch with B's expenses, as you submitted a copy of your insurance claim, payable to B and B's spouse. These fact patterns are also consistent with the above-cited case of Western Catholic Church, where lack of control over an organization's funds contributed to the organization's failure to establish an exempt purpose consistent with Section 501(c)(3) of the regulations.

An organization that is unable to demonstrate they have now or will have in the future sufficient records to show operations that exclusively further exempt purposes will not be found to meet the operational test under Section 501(c)(3) of the Code. You were unable to provide any evidence that you have any established policies and procedures to prevent inurement or that you keep adequate records. You are the successor to J, and J's tax-exempt status was revoked due to inurement of funds to B. As in the above-cited case of New Dynamics Foundation v. United States, you have not demonstrated that your operations exclusively further exempt purposes and that you have met your burden to resolve gaps in the administrative record. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

#### **Applicant's Position and Service's Response**

You assert you are formed to provide rehabilitation and care for neglected and abandoned horses. Regarding the specific details of your operations, you provided minimal responses to requests for information. The information you have provided indicates you were formed for the

personal benefit of your founder, B, and that you have some difficulty distinguishing between your expenses and B's expenses associated with maintaining B's ranch. Also, based upon the information on your website, you see yourself as a continuation of J's operations, as you state you have been operating for many years and have rescued 777 horses. In addition, you incorrectly state on your website that donations to you are tax deductible.

## Conclusion

Based on the above facts and law, you do not qualify for exemption under Section 501(c)(3) of the Code. More specifically:

1. The available facts show you have failed to pass the operational test, therefore disqualifying you from exemption under Section 501(c)(3) of the Code.
2. Your funds inure to the benefit of your founder, causing you to be disqualified from exemption under Section 501(c)(3) of the Code.
3. Your purchase and sale of horses is an activity reflecting a substantial non-exempt purpose, and causes you to be disqualified for exemption under Section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

*Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:*

*"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."*

*The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.*

*Your appeal will be considered incomplete without this statement.*

*If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.*

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure: Publication 892

Letter 4036(CG) (11-2005)  
Catalog Number 47630W